XI-HC—78

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Cr.A. No. 362 OF 2005

[Single Bench; Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANT Amosh Raika, S/o Ismile Raika, Aged about 26 years, R/o. Dokarpoka, P.S. Podagaon, District Gajpati (Orissa)

Vs

RESPONDENT State of Chhattisgarh, through- Police Station G.R.P., Bilaspur (C.G.)

06.12.2007

Miss Varsha Tiwari, Advocate for the appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State.

Heard.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 16th March 2005 passed in Special Criminal Case No.28/2004, whereby the learned Special Judge (Narcotics), Bilaspur has convicted the appellant under Section 20 (b) (ii) (B) of the Narcotics Drug & Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced to undergo R.I. for 5 years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand), in default of payment of fine to undergo additional R.I. for 6 months.

Case of the prosecution, in brief, is that the Station House Officer, Police Station G.R.P., Bilaspur received secret information on 22.5.2004 at about 7:40 evening that a person is coming in the general

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compartment by Heerakund Express train from Orissa carrying cannabis in a bag with a purpose of selling the same. After following the procedure prescribed under the Act and after recording the information he reached to the Platform No.3 of the Railway Station, Bilaspur and interrogated the person whose description was given in the information and thereafter effected seizure of 15 kg of cannabis vide seizure memo of Ex.P-10 and after effecting seizure, the First Information Report of Ex.P.-14 was registered. Sample of seized contraband was sent for analysis to Forensic Science Laboratory, Raipur and the FSL vide its report of Ex.P-17 confirmed that contraband was cannabis.

After completing investigation, charge sheet was filed under Section 20 (b) (ii) (B) of the Act. During trial 6 witnesses in all were examined by the prosecution and thereafter statement of the accused was recorded in which he denied the evidence available against him in the prosecution case and pleaded innocence & false implication. It was specifically pleaded that in fact he was apprehended for traveling without ticket, thereafter, a bribe of Rs.1,000/- was demanded and when he did not pay the demanded amount he has been implicated in the false case.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The trial Court after hearing the learned counsel for the respective parties has convicted and sentenced the appellant as mentioned in Paragraph 1 of this judgment.

Learned counsel for the appellant argued that the conviction of the appellant is based on the statement of Shri R.L. Bada(PW-4) Investigating Officer. The only independent witness namely Santosh Singh (PW-6) peon of Railways, has not supported the prosecution. Even the Investigating Officer has admitted in his cross-examination that separate weighment memo and recovery panchnama has not been prepared of the seized contraband and the same has been only mentioned in the seizure memo. The Investigating Officer did not obtain search warrant before effecting search and seizure and because of non compliance of the mandatory provisions the whole trial is vitiated and therefore conviction can not be sustained.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsels for the parties. I have perused the record as also the impugned judgment.

Shri R.L. Bada (PW-4), who has conducted the investigation, has deposed that he received a secret information on 22.5.2004 about a person aged 25-26 years described in the information of Ex.P-3 that the said person was coming by Heerakund Express train in the general

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

compartment and is carrying cannabis in the air bag, which he is bringing from Orissa side for the purpose of sale. Since the time of arrival of the train was near he prepared another panchnama of Ex.P-5 assigning the reasons for not obtaining warrant for search and thereafter proceeded towards Platform No.3 for effecting search where he found the accused. He gave notice to the accused regarding information received by him, obtained his consent for search and after apprising him about his right to be searched in presence of Gazetted Officer or Magistrate vide notice of Ex.P-6. He gave his personal search as also the search of his staff and thereafter the bag of appellant was opened in the presence of eyewitnesses in which some cannabis like substance wrapped in polythene was recovered. On preliminary examination vide Ex. P-8, he found that it was cannabis. On weighment vide Ex.P-9, total 15 kg of cannabis was recovered out of which 100 gram was separated as sample and the same was seized. Rest of the cannabis was also sealed and seized in the presence of eyewitnesses vide seizure memo of Ex. P-10. A railway ticket of second Class was also seized from the appellant on 25.1.2004 and cash amount of Rs.160/-. Seized and sealed contraband including the sealed sample were given to Maalkhana Moharrir for safe custody and thereafter the appellant was arrested and report of Ex.P-14 was registered. The information about the seizure was forwarded to the

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Special Court vide Ex.P-16. The sample was sent for analysis to the Forensic Science Laboratory, Raipur and report of the F.S.L is Ex.P-17 in which the sample as been found to be cannabis. The information about the secret information was also forwarded to the Deputy Superintendent of Police (Railways), Raipur vide Ex.P-18. In Paragraph 16 he has admitted that exact weight has not been mentioned in the weighment memo of Ex.P-9.

Santosh Singh (PW-6) has deposed that he went to G.R.P. Police Station on being called by the police where he was informed by the Police that cannabis has been seized from the appellant, who was inside the lockup, and he was asked to sign on certain papers whereupon he singed on Ex.P-3, Ex.P-5, Ex.P-6, Ex.P-8 to P-11, Ex.P-13 & Ex.P-25. However he does not know as to what has written in these papers.

So far as the argument advanced by learned counsel for the appellant that the Investigating Officer did not obtain search warrant before effecting search and seizure is concerned, the seizure has been effected from the railway station and the Investigating Officer has clearly recorded in the memo of Ex.P-5 the reasons for effecting search without obtaining search warrant, which appears to be just and reasonable and the investigation shall not be affected because of not obtaining search warrant.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

So far as the other argument that in the weighment memo of Ex.P-9 weight of seized contraband is not mentioned is concerned, it is true that memo of Ex.P-9 does not mention the weight of contraband which was seized, however seizure memo of Ex.P-10 mentions the quantity of contraband seized from the appellant and learned counsel for the appellant could not show as to what prejudice was caused to the appellant because of non-mention of the weight of contraband in the seizure memo, particularly in view of his defence that nothing was seized from him and he was in fact apprehended for traveling without ticket and a false case under the Act has been foisted on him on the basis of fake seizure. Irregularity, if any, in not recording the weight of contraband in the weighment memo of Ex.P-9 may not be a reason to discard the whole testimony of the investigating officer.

The third ground that the independent witness has not supported the version of the investigating officer is concerned, though Santosh Singh (PW-5) has not supported the prosecution case and has stated that he was made to sign in some blank papers in the police station and nothing was done before him by the police, however, he has admitted all his signatures in the papers prepared during investigation and there is no reason as to why the testimony of the Investigating Officer about the seizure of contraband should be

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disbelieved, particularly, when there is no suggestion from the defence that the investigating officer had any animus towards the appellant or that he had any definite reason for falsely implicating him in this case.

So far as the defence of the appellant that because he was traveling without ticket, a bribe was demanded by the police personnel and he could not pay the bribe, therefore, he has been falsely implicated in the case is concerned, the above defence is falsified from the seizure of the railway ticket from the appellant by the police at the time of investigation.

At this stage, learned counsel for the appellant submits that the quantity of contraband is 15 kg, which is less than commercial quantity, the appellant is in jail since 22.5.2004 and as such, he has already completed more than 3 years & 6 months of jail sentence and in these circumstances, the sentence imposed upon the appellant should be modified and he be sentenced for the period already undergone by him.

Taking into consideration the fact that the appellant has been convicted for possessing 15 kg of cannabis, which is less than commercial quantity, the appellant is aged about 26 years, he does not have any past criminal record and he is in jail since 22.5.2004, this Court is of the considered opinion that ends of justice will be served

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

if the sentence imposed upon the appellant is modified and he is sentenced to the period already undergone by him.

In the result, the appeal is partly allowed and while maintaining the conviction of appellant under Section 20 (b) (ii) (B) of the Act, the sentence imposed upon the appellant under this section is hereby modified and he is sentenced to the period already undergone by him. The appellant be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
DHIRENDRA MISHRA
Judge

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